ded, had it been necessary, in case the matter should become an issue in the future.

The plaintiff is entitled to judgment for $550,740.06. In view of that, it is not necessary for me to make any order on the second prayer relating to the dishonoured cheques.

The plaintiff to have costs, to be taxed, if not agreed.

Interest at 6% from date of judgment till payment.

Claim allowed.

Solicitors: *Sandhu & Co.; Susanna Lim & Co.*

MAHDINI BIN MUSTAPA v. PUBLIC PROSECUTOR

[A. Cr. J. (Bewley J.) November 26, 1984]
[Bandar Seri Begawan – Criminal Appeal No. 4 of 1984]

Criminal Law and Procedure – Appeal against sentence – Appellant, 17, pleaded guilty – Offence of unlawful carnal knowledge – No compulsion or undue influence – Appellant unemployed had wife and child – Whether magistrate's decision should be interfered with – Unlawful Carnal Knowledge Enactment (Brunei Cap. 29), s. 2 – Criminal Procedure Code, s. 262.

The appellant, 17, pleaded guilty to two charges of unlawful carnal knowledge of a girl under 16 years of age under section 2 of the Unlawful Carnal Knowledge Enactment, amended in 1981 to provide for a minimum sentence for this offence of not less than two years' imprisonment plus not more than 12 strokes of the cane in the case of an offender under the age of 18. The offence took place on successive nights. There was no suggestion of compulsion or undue influence on the part of appellant, who was unemployed and had a wife and child. He appealed against sentence.

Held, dismissing the appeal: the magistrate was right in deciding that section 262 of the Criminal Procedure Code had no application. There was no reason to interfere with his decision regarding the number of strokes imposed.

CRIMINAL APPEAL.

Appellant in person.

Dk. Zabaidah bt. Pg. Kamaludin (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Bewley J.: This is an appeal against sentence. The appellant pleaded guilty to two charges of unlawful carnal knowledge of a girl under 16 years of age under section 2 of Cap. 29. He was sentenced to imprisonment for two years and to two strokes of the cane.

Section 2 of The Unlawful Carnal Knowledge Enactment was amended in 1981 to provide for a minimum sentence for this offence of not less than two years' imprisonment plus not more than 12 strokes of the cane in the case of an offender under the age of 18.

This appellant is 17. The victim was five months short of her 16th birthday. The offences took place on successive nights. There was no suggestion of compulsion or undue influence on the part of the appellant. The matter only came to light when the girl's father reported to the Police that she had failed to come home.

The appellant is unemployed and, rather surprisingly, has a wife and child.

On these facts the magistrate, I dare say, might have been tempted to take a lenient view of the matter, but for the provisions of the amended section 2. He decided, rightly, that section 262 of the Criminal Procedure Code, which deals with the non-custodial treatment of youthful offenders, had no application. It is a general provision and, therefore, must be read subject to the specific terms of Cap. 29.

His only discretion lay in the number of strokes. He might have ordered only stroke, not two. He doubtless had regard to the maximum of 12 strokes and took the view that this was not a case for the imposition of the absolute minimum sentence. I see no reason to interfere with his decision.

The appeal is dismissed.

Appeal dismissed.